O Ags. Prod

K 1954

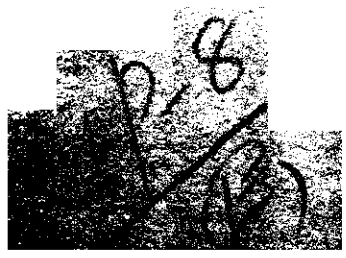
File No.

Legal Department

A. BRANCH

Subject:—

Opinions under the Bombay Agricultural Produce Marketing Act, 1939.



File No. O. Ags. Produce Market/54.

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C O N T E N T S.

Legal Department File No. O.Agrl.Produce Market/1954

Sr. No.	N.I./O.No.	Subject.	Pages.
		Opinions under Bombay Agrl. Produce Marketing Act 1939.	
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2.	20643-A 31-8-54.	Sec 6(1)(11) Whether it would be legally feasible to make the reserve seat also available to traders under this section.	9.
3.	22495-A 30-9-54	Sec 5A. Whether it would be competent for the Agrl. P.M.Jambusara to issue licenses or levy fees though it has not established market.	11.
4.	23559-A 14-10-54	Whether the Agricultural produce brought for sale to the market would be liable to the fees under the Act.	13-15
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Legal Department.

Under section 6 of the Bombay Agricultural Produce Markets Act, 1939, not less than 15 members were to be elected to the Market Committee from different cinstituencies; 7 by agriculturists, 4 by traders, one by the municipality and three nominees of Government. It appears that elections from the first three constituencies had been held for the Broad Committee. The election from the traders constituency was found to be defective and it was ordered to be held afresh. Sub-section (1) of section 6 has since been substituted by section 4 of the Bombay Agricultur Produce Markets (Amendment) Act, 1954 (Bom.XXIIIof 1954) and election from the local authorities constituency is also required to be held afresh. The Development Department considers that as the number of members to be elected by the agriculturists constituency is not changed no fresh election is necessary, and that fresh proposal elections from the local authorities constituency and fresh proposals for nomination of members by Government are necessary. The Remembrancer of Legal Affairs is Requested to advise whether the course proposed by the Development Department is legally correct.

2. By section 4 of the Amending Act (Bom.XXIII of 1954) new sub-section (1) has been substituted in section 6 of the Bombay Agricultural Produce Markets Act 1939. Section 8 of the Amending Act provides that the amendments made in the Act of 1939 by section 4 shall not apply during the period for which any member of a Market Committee holds office on the date of the commencement of the Amending Act and any casual vacancy in respect of any such member in the said Committee occuring during the said period shall be filled up as if the Amending Act was not passed. What section 8

saves is the period of office of existing members actually holding office on the date of the amendment. Sub-section (3) of section 6 of the main Act provides that every member of a Market Committee elected or nominated when it is first constituted shall hold office for a term of two years from the date of he 1st General meeting of the Market Committee and every such member elected or nominated thereafter shall holdoffic for a term of threeyears. As pointed out by the Remembrancer of Legal Affairs in his opinion No.25295 /A, dated the 15th December 1953, unless all the mem bers are elected and nominated the Committee cannot be said to have been constituted. Apparently there was no meeting of the Committee and the members said to have been elected before the amendment of section 6 cannot be deemed to have commenced holding office. In the absence of any specific provision in the Amen ding Act, their election is not saved. After prescri bing the Constitution under section 6(1) fresh electio ns from all the constituencies (including the agricul turists constituency) will have to be held and fresh nominations made as required by new section 6. Before holding such election it will also be necessary to prescribe the organizations of agriculturists and the class of Cooperative Societies who shall be entitled to elect under sub-section (1), clauses (i) and (ii) and the manner in which a member shall be elected by local authorities within whose limits the market yard lies under clause (iii)(b).

Sd/-

Joint Secretary to Government.

U.R. to D.D.No. 14200/A dated the 10th June 1954.

VGP. 20-7-56.

The view taken by the Collector, East Khandesh and concurred in by the Registrar of Co-operative Societies does not appear to be correct. The proviso to section 6(1)(ii) of the Bombay Agricultural Produce Market Act, 1939 being imperative and the reservation of a seat for the class of societies having been made thereunder by rule 7A, it would not be legally feasible to make that seat also available to traders under section 6(1)(ii) even though it has remained unfilled for want of approved and registered Societies of that class under Rule 7A.

Sd/

Joint Secretary to Government.

U.R. to D.D.No. 20643-A dated the 31st August 1954.

VGP. 20-7-56.

 LEGAL DEPARTMENT.

Under section 5A of the Bombay Agricultural Produce Markets Act, 1939 the establishment of a market under section 5 is a condition precedent to the market committee issuing licences in accordance with the rules to traders, commission, agents etc. Consequently since the Agricultural Produce Market Committee, Jambusara has not established a market, it would not be competent for that committee to issue licences or to levy fees for the same. The view taken by the Development Department is correct.

Sd/

Joint Secretary to Government.

U.R. to D.D.No. 22495/A, dated the 30th September 1954.

VGP. 20-7-56.

The question raised for the R.L.A.'s considera tion is whether the agricultural produce brought for sale to the Agricultural Produce Market would be liable to the fees under the Bombay Agricultural Produce Markets Act, 1939.

Section 11 of the Bombay Agricultural Produce Markets Act, 1939, provides:

"The Market Committee may, subject to the provisions of rules and subject to such maxima as may be prescribed, levy fees on the agricultural produce bought and sold by the licensees in the market area.

Section 28(2)(c) provides for making rules in respect of the management of the market as folllws:-

"maxima fees which may be levied by the market committee in respect of agricultural produce bought and sold by persons holding a licence under the Act in the market area."

It would be clear from these provisions that rules can be framed for the levy of fees on the agricultural produce bought and sold by licensees in the market area and not on the agricultural produce brought by the producers for sale. Agricultural produce would be liable to the payment of fees only when it is bought and sold by the licensees in the market area. Rule 53(1) of the Bombay Agricultural Produce Markets Rules 1941, provides:

"The market committee shall levy and collect fees on agricultural produce brought and sold in the market area at such rates as may be specified in the bye-law."

It is apparent that this provision is inconsistent with section 11, for, under this rule the agricul tural produce brought and sold is made liable for the fees instead of the agricultural produce bought and sold. Consequently, this rule being inconsistent with section 11 will have to be amended by substi- tuting the word "bought" for the word "brought" in that rule. Sub-rule (4) provides:

"The seller who is himself the producer of the agricultural produce offered for sale and the buyer who buys such produce for his own private and/or household use shall be exempt from payment of any fees under this rule."

It would, therefore, be clear that the producer of the agricultural produce brought to the market area for sale would not be liable for the fees as although he is a seller, it is intended to give him, relief. Rule 54(1) provides:

"The fees on agricultural produce shall be payable as soon as it is brought into the market yard or market property or market area as may be specified in the bye-laws."

As stated above, this rule is also inconsistent with section 11. Such fees can be levied only when the agricultural produce is bought or sold. Consequently, rule 54(1) will have also to be amended to make it consistent with section 11. It would, therefore follow that the contention of the agricultural producers of Broach is correct and the levy of fees on the agricultural produce brought by these producers for sale appears to be invalid.

Sd/ J.R. Dhurandhar.
14/10

Remembrancer of Legal Affairs.

U.R. to D.D. No. 23539/A dated the 14th October 1954.

VGP. 20-7-56.

Seen and returned.

The view taken by Development Department is correct. The constitution of the meeting called on 27th June 1954 for the election of the Chairman being itself illegal in view of rule 30(2) as amended by Government Notification No. P.M.A.8554 dated 8th May 1954, the election of Shri B.D. Sanghavi as Chairman at that meeting would be invalid. Rule 28(11) relied on by Development Department for setting aside the election of Shri Sanghavi would not be available. The proper provision for so doing appears to be section 28 of the Bombay Agricultural Produce Markets Act, 1939. There is no substance in any of the contentions raised by Shri Sanghavi.

Sd/J.R.Dhurandhar.
2/11

Remembrancer of Legal Affairs.

U.R. to D.D. No. 24929/A dated the 3rd November 1954.

VOP. 21-7-56.